Supreme Court, U.S.
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No:

In The
Supreme Court of the United States

Gregory Alston

V.

GTE Directories Corporation

On Petition for Writ of Certiorari

UNITED STATES DISTRICT COURT
SEVENTH JUDICAL DISTRICT
UNITED STATES COURT OF APPEALS

On Petition for Writ of Certiorari

Pro Se Gregory Alston
7533 N. Oakley Avenue
Chicago, IL 60645
(773) 262-1821
Ga6126@Aol.com

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Statement of Issues

1) District Court Judge Manning used her discretion in her ruling. She clearly stated that her reasoning for her ruling was due to the plaintiff had not worked any overtime in 1995.

2) The District Court failed to realize, that the plaintiff is rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF RE-PRISAL PROHIBITED Due to the defendent demanding that the plaintiff work during drill weekends.

3) A clear violation of the Plaintiff's Seventh Amendments Rights. (Jury Trial)

4) The judge to this day has not answered my motion to supplement the record with direct evidance I filed two motions one was mooted and she refused to answer the first motion.

5)Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

6)The defendent should be fined, for not particapting in the framwork of discovery.§ 33:416, Fed 37.

7)Court of Appeals failed to embrace the Issue instead the affirmed the desision with hearsay a documente.
Throughtout the case the defendent has produced affidates,witness and documents without allowing for cross examination.

8)Both Court's refused to knowledge that I had established a prima faca case. Dist 1991, 156 Ill.DEC 797. 212 ILL App. 3d 645, 571 N,E.2d 777 By not recognizing that similary employee of defendent were treated more favorable than Alston.

Defendent

GTE, a Delaware Corporation doing business in Illinois with its principal place of business located at GTE Place, 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261-9810.

Counsel for the defendent:

Faegre & Benson

John Polly

Jennifer Haskin Will

90 South Seventh street

Minneapolis, Mn 55402-3901

(612) 336-3000

Franczek Sullivan PC

David P. Radelet

Michael Z. Green

300 S Wacker Drive

Suite 3400

Chicago, IL 60606-6785

(312) 986-0300

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TABLE OF AUTHORITES

1. The Trial Court Erred in not recognizing that the Plaintiff had a Prima Facie Case of Race Discrimination under both Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

l) *Johnson v. City of Fort Wayne*, 91 F.3d 922, 931 (7th Cir. 1996)9, 18

2) *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)

2. The Court Erred by not recognizing that similarly employees of Defendant were treated more favorable than Alston.

l) Hiatt v. Rockwell Intern. Corp., 26 F.3d 761 (7th Cir. 1994) 11, 14

2) Johnson v. Artim Transp. System, *Inc.*, 826 F. 2d 538, 543 (7th Cir. 1987)

3) Hughes v. Brown, 20 F.3d 745 at 747 15

4) National Labor Relations Board v. Shelby Memorial Hospital Association, F.3d 550 (7th Cir.- 1993)

5) Green v, Amstrong Rubber Co,. 612F.2d 967,22 F.E.P. Cas (BNA)125 (5th Cir) cert. denied,449 U.S. 879 (1980)

3. The Trial Court erred in granting the Defendant's Summary Judgment, because there were disputed issues of facts pending.

l) Holland v. Arthur Anderson & Co., App. 1 Dist.l991, 156 Ill.Dec. 797, 212 Ill.App.3d 645, 571 N.E.2d 777.20, 21

2) *Sons v. Taylor*, App. 5 Dist.l991, 162 Ill.Dec. 467, 219 Ill.App.3d 923,579 N.E.2d 1281.19, 21

3) Skipper Marine Electronics, Inc. v.United Parcel Service, Inc.,App. 1 Dist.1991, 155 Ill.Dec. 55, 210 Ill.App.3d 231, 569 N.E.2d

3) Kerr v United States Dist. Court for Northern Dist. (1976) 426 US 394. 48 L Ed 725, 96 s Ct 2119.

The Defendant violated The Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED

Fair Housing Act 1968 (42 USCS § 3612) 3rd Circut--Laskaris v Thornburg(1984, Ca3 Pa) 733F22d260,38 Fr Serv 2d

Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

Ex parte Simons (1918) 247 US 231, 62 Led 1094, 38 S CT 497

Hindman v. National - Ben Franklin life Insurance Corp., 677 F.2d 617.620 ,620 (7th Cir. 1982),

JURISIDICTION STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C.§1625(a). This is a discrimination case. The Plaintiff (ALSTON) was discharged from GTE Directories Corporations due to race discrimination in employment in violation of Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981. The Plaintiffs Seventh Amendment rights to trial by jury were ignored. The defendent (GTE Directories Corporations) was granted summary judgment in the case. The Plaintiff (ALSTON) states that The Court erred by not ordering the defendant to produce the direct discovery evidence needed for District Court or Court of Appeals to make a fair and equitable decision.

Judge Blanche M. Manning's Memorandum Notice clearly states her reasoning for her judgment. (was due to the fact that Plaintiff had not worked any overtime in 1995) the Plaintiff produced some of 1995 year end pay stubs to prove the existence of fact in issues without any inference. Due to the Defendents evassive discovery tactics the judge did not realize her ruling was against **§ 4311 Discrimination against person who serve in the uniformed services and act of reprisal prohibited.**

The Court erred by not stating the plaintiff established a

prima facie case of race discrimination under both Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

The Court erred in the former proceedings by striking the information, due to defendents evasive discovery tactics, by not producing the required amount of timecards as promised, and the electronic key entry log. § 33:416, Fed 37. The District Court made the ruling based on the information at hand. The Distrist Court judge erred which improperly denied a party the right to a jury trial in a civial action. The Appellate Court erred by not embracing the judges desision. District Court Decision §3:235 Compelling execrise of authority by mooting the second motion and refusing to address the first Motion to Supplement the Record, with direct evidance. the District had the oppotunity to correct the descretion, But refused to take any action.

REASON FOR GRANTING CERTIORARI WRIT

This action was brought by Plaintiff ProSe, GREGORY ALSTON, an African American male, residing in the State of Illinois. Plaintiff requests sanctions against Defendant under FED.CIV.P 37 for not adhering to discovery as promised. Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the Court, all summary judgment against plaintiff. UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301,§4311(a)(b)ACTS OF REPRISAL PROHIBITED due to defendants constant demands for plaintiff to work during drill weekends.The Plaintiff request for relief pursuant to 28 U.S.C. § 1331 and 1367, 42 U.S.C. 2000 e et. seq. and 42 U.S.C. 1981 and Title VII of the Civil Rights Act of 1866, as amended, against his termination by his employer Defendant. GTE, a Delaware Corporation doing business in Illinois with its principal place of business located at GTE Place, 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261-9810.

The Defendant stated that Plaintiff was terminated, because he falsified his timecard records, went to school, went to the Navy Reserves, and would not work overtime, and same was against GTE Rules, which were set down in their rule book. That Plaintiff stated that the termination

reasons are a pretext, and Defendant termination Plaintiff because he is an African American and that is not a legitimate reason for termination.

The Plaintiff was prepared to present his witnesses to testify, refuting said charges by the Defendant, but the Defendant motioned for a Summary Judgment. After briefing, the Court allowed a Summary Judgment in favor of the Defendant and against the Plaintiff.

The Court Order on the Summary Judgment was riddled with errors as to the facts, the witnesses, and the findings. The Plaintiff was not allowed to bring his witnesses to Court to testify that white employees were allowed to leave work early to go to school and falsify their time card records, who continued to work at the Defendant's employment.

The Court did not order Defendant to produce the company's time sheets that were requested in discovery In the Production of Documents. *Federal Business Record Act (28 U.S.C.§1732) 8 ALR FED919.Timecard entry logs, records made solely for the purpose of the pending litigation.* The Defendant could find all other requested documents, except the pertinent documents to this case. The Court erroneously based its facts and judgment soley on the Defendant's presentation of facts and documents. The Court

gave no credence to the Plaintiffs testimony, nor allowed Plaintiffs witnesses to testify to the facts of this case and the discriminatory practice of the Defendant against the Plaintiff. *Kerr v United States Dist. Court for Northern Dist. (1976) 426 US 394. 48 L Ed 725, 96 s Ct 2119.*

The Court ruled in favor of the Defendant and against the Plaintiff on the Summary Judgment without a hearing. The Plaintiff did not learn of the Court's decision in time to motion for a reconsideration, and the Plaintiff appealed the Court Order.

GREGORY ALSTON was hired by GTE in the summer of 1993, as a helper in the Press Department of GTE'S printing plant in Des Plaines, illinois. LESLIE WATKINS, Human Resource Administrator, and DON DAVIS were involved in the process of hiring Plaintiff and had personal knowledge that Plaintiff is African American.

Among Plaintiff's is other general responsibilities as an operator for the Rachwal Platemaker, Plaintiff trained other employees on such equipment. GTE Management not only had knowledge of Plaintiff having been a member of the Naval Reserves and a student enrolled at Northeastern Illinois University throughout his employment at GTE, but, that management gave explicit authorization that he be allowed to do such activities and be given leniency to the hours that he would be

at the GTE facility.

At all times relevant, Plaintiff performed his duties in a satisfactory manner, having received overall favorable ratings all three years that he was evaluated. His performance evaluations contained such statements, as "[t]he press room is very satisfied with the service he provides. " Plaintiff further states that he had good relations with his co-workers.

His performance evaluations state, "Greg has used good judgment in dealing with his co-workers," "Greg is pleasant and enjoyable to work with," and "Greg communicates very well with his peers on his shift.
Prior to Plaintiff's is being hired and during his interview with DON DAVIS,

Plaintiff was informed that he was going to be trained on the Rachwal Platemaker since he had no prior experience working on such equipment. Plaintiff, as well as the other employees, made repeated requests to be allowed to cross-train on other equipment, but he was denied the request. Caucasian employees were being trained on other machines. On July 26, 1995, Defendant was hiring for an available position as a "prepress tech." Plaintiff was not qualified to fill the position because of his lack of training, because the Defendant would not allow him to be trained on other machines.

Plaintiff requested to fill an available position operating the Rachwal camera and his request was denied. LYNN PRINT pressured TORY LINTZ(Caucasian) to fill the same vacant spot for the Rachwal camera, even after LINTZ refused the position and stated to PRINT that she did not want the position, After Plaintiff had stated to PRINT that he did want the position.
On or about July 26, 1995, Plaintiff applied for the position of pre-press tech, but was denied the position. On or around January 15, 1996, Plaintiff applied for an available position with Defendant, but was denied the position again.
On or around July 30, 1996, ALSTON was transferred out of the Pre-press Department to the Press Department. Shortly after ALSTON transferred to the new department, his wife, RENEE, called, at between 8:15p.m. - 8:30 p.m., and left a message with PAULINE ANDERSON to please have ALSTON return her call.
ALSTON's returned her telephone call right away, at which time, ALSTON'S wife informed him that she had injured herself and requested that he come home, as she was alone in the house. ALSTON requested, and was granted, permission to leave by his supervisor, Mr Oberding and he left to go home shortly thereafter.

ALSTON did not fill out his time card prior to leaving on July 30, 1996. In fact, Plaintiff did not even know the where-abouts of his time card at that time, since he had just hours

before had been forced to relocated to a new department and his supervisor had possession of his timecard.(Exhibit 3) On approximately August 3, 1996, BILL OBERDING requested that Plaintiff fill out his time sheet for the previous week. Plaintiff states that "it was normal practice" of the employees to fill out their time cards on a date later than the date for which their time was recorded. For example, it was customary for employees to fill out their time card for a pay period at the end of such pay period. Plaintiff was not given the opportunity to accurately report his hours for the date in question, as he filled out his time sheet, not on the day in question, but at the end of the week.

Plaintiff started to sign the time card, but did not complete his signature. Furthermore, prior to verifying his reported time with his signature, Plaintiff excused himself from BILL OBERDING'S presence, and explained to BILL that he wished to go into the locker room to verify his time. Plaintiff kept notes of his time in his locker.

Plaintiff was unsure whether he had worked three hours or two hours on July 20, 1996. He was also unsure of whether he had worked one hour or two hours on July 28, 1996. He inadvertently reported one hour of work for July 28, 1996 instead of two hours, and reported three hours of work for July 30, instead of two hours, The total decrepience is 45 minuets. Which could have been cleared up if the supervisor had

fullfilled his job and checked the time card entery logs, to acurtly verfiy the total time.

When Plaintiff returned to finish reporting his time and sign his time card, OBERDING was gone; hence, Plaintiff never had the opportunity to accurately report his time. Plaintiffs timecard for the pay period including July 30, 1996 is only partially signed with his first name, "GREGORY", rather than with his full signature, "GREGORY ALSTON" as is signed on all of his other time cards during the three years he worked for the Defendant.

Plaintiff observed PRINT"S time card on two separate occacions as it indicated that she worked her regular hours, and Plaintiff further testified that on two separate occasions that he could recall, he tried to locate PRINT during her normally scheduled work hours and was told she had left for school. Defendant suggests that the inaccuracies on PRINT'S time cards are offset by the total number of hours she worked however, PRINT was not terminated. Moreover, OBERDING must have had knowledge of any other employees' time card falsification as evidenced by the fact that he was the supervisor in charge of time cards, and he noticed the discrepancy in Plaintiffs time card immediately.

Plaintiff observed MCCALL falsifying his timecard after arriving late. Plaintiff also observed MCCALL explaining to a

junior personnel member how to fill out his time card falsely. Plaintiff complained to BILL OBERDING that BILL MCCALL was consistently arriving late and asked OBERDING to discuss these concerns with MCCALL. OBERDING subsequently spoke to MCCALL about the behavior, but MCCALL was not terminated.

Additionally, management knew that an employee other than Plaintiff was falsifying his or her time sheet as evidenced by the minutes of a meeting held on June 20, 1996. Plaintiff was not present at this meeting, and the meeting took place prior to the time that ALSTON was suppose to have committed time card falsification. Notably, one of the primary topics of this meeting addressed the issue of time card falsification. One of the primary topics of this meeting addressed the issue of time card falsification and the serious nature of the offense.

Certainly, management was aware of a problem with time card falsification and that the culprit was not ALSTON, as it would be pointless to address a disciplinary speech at an individual who is not present to reap the benefits of such a lecture. Plaintiff was not terminated for falsification of his time card. Plaintiff was terminated, because he is an African American and is affliated with the military.

The Court erred by not stating that the Plaintiff had a Prima Facie Case. To make out a *prima facie* case of discriminatory discharge under either Title VII or Section 1981, ALSTON

must prove: "(1) that he belongs to a protected group; (2) that he performed the job satisfactorily; (3) that he was subject to an adverse employment action; and (4) that similarly situation employees received more favorable treatment." *Johnson v. City of Fort Wayne, 91* F.3d 922, 931 (7th Cir. 1996). ALSTON is a member of a protected group because of his race African American ALSTON performed his job satisfactorily he suffered an adverse employment action in that he was terminated (Defendant's 12(M) Statement No.47); and similarly situated (Caucasian) employees received more favorable treatment. Similarly situated, Caucasian employees were not terminated.

The Court erred by discussing Plaintiff's not working overtime, because Plaintiff did work overtime and he had his pay stubs to prove same. Plaintiff was cooperative and did not work overtime when he had to attend military duty (once a month on weekends), and when he had classes at Northeastern Illinois University.

From the beginning of Plaintiffs time on the job, the Defendant understood and had always allowed Plaintiffto go to these two necessary events. Caucasian employees were allowed to leave work early in order to attend college classes, also. The Court stated on page 3, bottom paragraph of its 6/18/98 Memorandum and Order that Defendant had a Rule Book that stated that Defendant, at said time of firing, Plaintiff had a corrective

counseling process, which included three steps: 1) informal discussions 2) written warning, and 3) a final warning. The Court states the policy exists, but none of the three steps were used with Plaintiff. During this time, the Plaintiff was given satisfactory ratings, given awards for attendance and very good service ,to the company, and given the responsibility to train new employees on the company's equipment.

The Court erred on pages 10 and 11 in the 6/18/98 Court Memorandum and Order by not ordering the Defendant to produce the electronic key card entry log and the timecards for the specific dates in question to show the direct evidence that Defendant discriminated against Plaintiff, because he is an African American affliated with the Military. The Defendant's criteria for termination of an employee was not used in this case, because Plaintiff is an African American.

The Court erred by not finding Plaintiff was discriminated against on Circumstantial Evidence and set same for trial to hear the crucial testimony of the witnesses on falsifying documents, especially testimony of LYNN PRINT and BILL MCCALL.

Order, the Court states that "Alston was discharged for time card falsification" and that ALSTON had failed to raise a genuine issue of material fact as to whether the Defendant proffound reason for terminating his employment is merely a

pretext for discrimination. Defendant has shown that Caucasian employees were treated differently; and Caucasian employees falsified time cards and were not fired.

Defendant has argued, in its Motion for Summary Judgment, that ALSTON cannot establish that similarly situated employees were treated more favorably than ALSTON. Defendant's argument relies on many false conclusions as well as an erroneous statement of law.

The Defendant also refused to release requested documents. First ALSTON has not admitted to falsifying his time card. ALSTON has only admitted to initially recording on his time sheet that he left work on 9:00 p.m. for July 30, 1996, but ALSTON has also testified that he was not given the opportunity to complete his time sheet prior to BILL OBERDING leaving with his incomplete time card.

However, assuming, ***only for the sake of this argument*** that ALSTON did falsify his time sheet, ALSTON has provided the Court with sufficient evidence that other employees also falsified their time sheets.

ALSTON does not have to allege the same misconduct, only similar misconduct in order to establish similarly situated individuals. Defendant erroneously relies on *Plair v. E. J. Brach & Sons, Inc.*, as the final word on the doctrine of law regarding what constitutes a similarly situated individual.

Defendant argues that Plair mandates that in order to be considered similarly situated to another employee, a Plaintiff who has engaged in misconduct must locate another employee who has engaged in *the same misconduct* as the Plaintiff.

Bill Oberding never verified the correctness of the total hours worked with the electronic key card entry log, As the plaintiff had requested at the time of termination. As the Court must consider that Bill Oberding didn't do his job, yet Alston received the adverse action.

It is well established and undisturbed law in the Seventh Circuit that in order for employees to identify similarly situated individuals with respect to misconduct, they need only identify individuals whose acts are of comparable seriousness and not identical company disciplinary rules. *Hiatt v. Rocwell Intern. Corp.*, 26 F.3d 761 (7th Cir. 1994) Plaintiff's fare free to compare similar conduct, focusing more on the nature of the misconduct rather than on specific company rules"),

See also *Johnson v. Artim Transp. System, Inc.*, 826 F. 2d 538, 543 (7th Cir. 1987) (acts of comparable seriousness need not be violations of identical disciplinary rules). Defendant's narrow and incorrect pleading of *Plair* comes from a footnote at the end of the case upon which Defen-

dant now bases its entire argument . *Plair*, 105 F.3d at 350, F.N.3. Footnote 3 states, in relevant part:

"Moreover, most of the 'comparables' did not engage in all of the same misconduct Plair did: leave work early without supervisor approval, fail to punch out, his time card was fraudulently stamped, the checker sheet falsely showed him to have completed his shift, and found behind the plant under suspicious circumstances [having to do with a 100 pound box of candy] without a coherent explanation. The district court found Plair's circumstances 'unique' and thus that Plair's 'comparables' did not raise a genuine issue of material fact." Id

Unlike the situation in Plair, for which Plair was even arrested, ALSTON did not engage in a litany of willful misconduct all occurring within a time frame of a couple of hours. Moreover, ALSTON was granted his supervisor's permission before he left work on July 30, 1996, and he did not have another employee falsify "punch out" for him, nor did he intentionally misrepresent his time worked when he incompletely recorded his time onto his time card . Most importantly, ALSTON was accused of a single and simple violation falsifying his time card. This is not a unique situation like Plair's bizarre adventure of misconduct. Caucasian Employees of Defendant who falsified their time cards were not terminated for the same conduct as Alston allegedy committed.

Although ALSTON is not required to allege that other employee's engaged in the same misconduct, ALSTON is able to identify two employees who did, in fact, engage in the same

conduct, but who were not terminated.

The personnel policy Alston is alleged to have violated is 3.2.1 which states, "knowingly falsifying a time document and/ or not reflecting actual time worked will be cause for immediate termination.

Both LYNN PRINT and BILL MCCALL violated this policy during the time ALSTON worked for Defendant, but neither was discharged. The electronic key card entry logs would prove fact in this matter.

In fact, Defendant seems to have made concessions for MS. PRINT and MR. MCCALL that as long as their total number of hours actually worked equal the total numbers of hours they claim to have been at Defendant's work site, they are excused from having to follow Defendant Corporation's personnel policy and are then free to falsify and/or misreport their time as much as they want. (Defendant's Memorandum of Law in Support of its Motion for Summary Judgment, p. 14, 18).

This flexibility was not extended to ALSTON. ALSTON has testified that even if he inadvertently misrecorded the actual times coming and going on his time card that he actually worked more hours than what is even recorded on his time sheet, as he generally arrives at work ten to fifteen minutes early. (ALSTON declaration). Further, ALSTON has testified that on Sunday July 28, 1996, he worked an extra hour and

thirty-five minutes of overtime not reflected on his time sheet. (ALSTON declaration). Because ALSTON was not given the opportunity to use his extra hours to offset the inaccuracy on his time sheet, and LYNN PRINT (Caucasian) is routinely given that opportunity, ALSTON has established a prima facie case of race discrimination, as Defendant's have offered no reasonable or legitimate explanation as to why PRINT received favorable treatment.

Similarly, Defendant has offered no reasonable or legitimate explanation as to why MCCALL was not terminated for falsifying time sheets. MCCALL consistently came to work late, every day, but consistently recorded on his time card that he was on time. Because the time sheets affirmatively state that they are to be filled out in 15 minute increments MCCALL'S act of failing to accurately fill out his time sheet to the fifteen minute increment is an act of time sheet falsification and results in him getting paid for an extra hour and a quarter per week. Even if this Court finds that MCCALL'S actions constituted only repeated tardiness, the Seventh Circuit has stated that similar conduct violations are sufficient to establish similarly situated employees. *Hiatt v. Rockwell Intern. Corp.*, 26 F3d 761 (7th Cir. 1994).

Management knew of other employees who falsified their time sheets. Defendant has also argued that even if

Plaintiff was to establish that similarly situated employees also falsified their time sheets, Plaintiff could not establish that Defendant was aware of such behavior by these employees and therefore, could not have treated them more favorable.

Aside from almost admitting to its knowledge of PRINT'S and MCCALL'S time card falsification in its Memorandum in support of its Motion for Summary Judgment Defendant had knowledge of time card falsification by other employees prior to the time that ALSTON was alleged to have falsified his time card.

Defendant was aware at a meeting that took place on June 20, 1996, in which time card violations were discussed, without naming the individual accused.

ALSTON was not present at this meeting. Clearly, management was aware of a problem with time card falsification and the culprit was not Alston, as it would be pointless to address a disciplinary speech at an individual who is not present to reap the benefits of the lecture.

ALSTON was never even given the opportunity to explain the inaccuracy on his time card to BILL OBERDING, nor did Defendant make any efforts to independently verify the time at which ALSTON left work on July 30, 1996, by looking up the electronic key card record logs, which record when individuals enter and leave the building after hours. This action of willfil oversight/

neglect by Oberding was merely a pretext for discrimination. Defendant has shown that Caucasian employees were treated differently; and Caucasian employees falsified time cards and were not fired.

Defendant also did not allow ALSTON a voice with which to complain of mistreatment, as Defendant denied ALSTON'S intemal complaint against Defendant for disparate treatment despite of such treatment which ALSTON provided to the company. Defendant's treatment of ALSTON not even allowing him an opportunity to refute misconduct before or after terminating him – as opposed to Defendant's treatment of PRINT and MCCALL – allowing these employees to routinely violate a written company policy which is supposed to result in immediate termination is a textbook example of disparate treatment of similarly situated employees.

At the very least, the differential treatment between these employees creates a material issue of fact of whether Defendant discriminated against ALSTON, which is not properly decided on summary judgment.

Defendant's stated reason for terminating ALSTON is pretextual.

An employee may establish pretext indirectly by providing one of the following: (1) Defendant's explanation had no basis in fact, or (2) Defendant's reason for terminating Plaintiff was not the 'real' reason, or (3) the reason stated was insuffi-

cient to warrant the adverse job action. *Johnson v. City of Fort Wayne, Indiana, 91* F.3d 922, 931 (7th Cir., 1996). When establishing that an employer's explanation is pretextual, an employee must "focus on the specific reasons advanced by the Defendant[s]." Citing *Hughes v. Brown,* 20 F.3d 745 at 747. Defendant's purported reason for terminating Plaintiff is insufficient grounds to warrant Plaintiffs termination. (all evidence on material issue not produced).

In the instant case, questions of fact were pending when the Court ruled on a Summary Judgment for Defendant. Some of the questions of material fact that need to be addressed in testimony are as follows:

1 . The credibility of the employer's representatives, BILL OBERDING, STEVE SCARBURY, PAUL KIEFER, RODGER DELONG, AND LESLIE WATKINS.

2. The credibility of LYNN PRINT, BILL MCCALL, and RALPH DUTTKO, who leaves work early, and/or changes his/her time card.

3 . The credibility of Plaintiff.

4. The documents of the time card entry log from May through August, 1996, would show that Plaintiff did not falsify his time card and that others did.

5. The Court did not acknowledge the conflicting statements

between the Defendant's employer representatives: BILL OBERDING and LESLIE WATKINS as to whether the Defendant had time card entry logs or not.

6. The comparison between the time card logs and electronic key card entry log will show that Caucasian employees falsified their time sheets. Alston testified that he filled out his time card at various times. Some time that day after work, the next day, or some time at the end of week Plaintiff would fill out his time card, like other employees.

7. The Court ignored Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED due to defendant's constant harassing demands for the Plaintiff to work overtime during drill weekends.

The real material facts issue that must be addressed is that Plaintiff has witnesses that will testify to other employees of the Defendant that fill out their time cards similarly to the Plaintiff, and Caucasian employees having falsified time cards without being terminated from the Defendant's employment. The Court should hear the witnesses' testimony and see the requested production of documents that Defendant is hiding and not producing, which will refute the Defendant's reason for terminating the Plaintiff.

The Court's 6/18/98 Memorandum and Order is filled with

erroneous material statements that the Court states as facts, of this case, even though neither side stated same, such as:

1. The Court stated that Plaintiff refused to work overtime on page 3 and 4 of the 6/18/98 Memorandum and Order. The Plaintiff testified that he worked overtime frequently, and he has enclosed in the Appendix his overtime year end pay for 1995. The Court refused to order Defendant to produce the document to show Plaintiff worked overtime.

2. The Court stated that Plaintiff committed intentional falsification of his time card, and Plaintiff testified that he did not intentionally falsify his time card. The employer contributed to Plaintiffs unemployment compensation that he received for six months. If the employee commits misconduct on the job and that is why he is fired, then the employee will not receive unemployment compensation.

See Appendix for claimant information and pay stubs from the beginning, middle and end of the time period and the W-2 Form for 1996. The unemployment office stated that the falsification of the time card was not willful or deliberate and thery was no noted history of this action.

3. The Court stated on page 5 of the 6/18/98 Court Memorandum and Order, that Plaintiff refused to work for 8 hours, five days a week, to 10 hours, four days a week. ALSTON objected to those hours." This is not true. ALSTON said he did

work the new hours, and his timecard will show that he worked 10 hours, four days a week. See Appendix showing Plaintiff worked for Defendant 10 hours from 6:00 a.m. to 4:00 p.m. (7/30/96 - 8/12/96)

4. The Court stated that Plaintiff refused to work on weekends. Plaintiff stated that he worked on weekends, except when he was m school at Northeastern Illinois University or attending the Navy Reserves, which he had permission to do by his employer for the three (3) years he was Defendant's employee.

5. The Court stated on page 7, third paragraph of the Court's 6/18/98 Memorandum and Order, that "there is no time clock at the Des Plaines Plant..." Plaintiff testified, Defendant LESLIE WATKINS testified, and the record shows that there IS a timeclock at the Des Plaines Plant, which is called an electronic entry log. See same in Appendix. Federal Business Record Act (28 U.S.C.§1732) 8 ALR FED 919.§33:413.

6. The Court states that "GTE'S policy provides that [k]nowingly falsifying a time document and/or not reflecting actual time worked will be cause for immediate termination. And that the supervisor is responsible for verifying and maintaining accurate record of the hours worked by each employee. The policy does not make any exceptions for falsification of less than an hour. The Plaintiff testified that he did not falsify his timecard,

and he had not completely filled out his time card, as he only wrote his first name. Defendant, allowed unemployment compensation to be paid to Plaintiff who was deemed not willfully and deliberately falsifying said job time card. The Court should hear the testimony of Caucasian employees that falsified time cards and were not terminated from their jobs. The Court refused to order the Defendant to produce the records of the said Caucasian employees to show that Plaintiff did not falsify his time card.

7. The Court on the 6/18/98 Memorandum and Order on page 8, paragraph 2, stated that the Defendant "WATKINS called his supervisor THERESA MARTINEZ, the Regional Director of Human Resources. WATKINS explained the facts, as she understood them and solicited MARTINEZ'S input." Plaintiff states that he asked MARTINEZ if she gave WATKINS any input and MARTINEZ state, "no." WATKINS is not telling the truth, and the Court should allow MARTINEZ to testify to what she said and did, and the Court should not rely on Defendant's hearsay from WATKINS.

8. The Court stated on page 8, last line on the Court's 6/18/98 Memorandum and Order that "Neither OBERDING, SCARBURY, WATKINS, nor MARTINEZ are aware of any other GTE employee who ever falsified a time card." The Plaintifftestified that he knew two (2) Caucasian employees

that falsified time cards, and the Court should allow them to testify and be examined and cross-examined. The Court erred, because there was no deposition of MR. SCARBURY and no deposition of MS. MARTINEZ. Therefore, the Court must be erroneously using hearsay to make its statement. The Court has only cited and looked at the Defendant's briefs for Summary Judgment, and the Court did not consider Plaintiff's brief and the Court record. Otherwise, the above points in which the Court erred would not have been made in this 6/18/98 Memorandum and Order.

The Defendant allowed the employee's flex time at the job, and employees could take off at one point and make up the time on another day. Employees were doing same, including Plaintiff, GREGORY ALSTON, for about one year. The Court never acknowledged that the employer allowed flexible time to its employees, and the Plaintiff was allowed to go to school and allowed to go to the Navy Reserves, and work to put all of his job time through the week and some weekends.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Defendant violated The Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED

Fair Housing Act 1968 (42 USCS § 3612) 3rd

Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

The Plaintiffs Seventh Amendment rights to trial by jury.

CONCLUSION

The plaintiff has been greatly harmed, due to the defendants unjust tactics, by not presenting direct evidence, not allowing testimony of material fact that will support his allegations of being terminated, because he is African American and not the pretext of falsifying his timecard without a valid signature. There are other issues such as Fraud, discovery violation, errors in judicial procedures and the plaintiff Seventh Amendment Rights being ignored. The court of Appeals didn"t embrace the the issues of District Court ruling,insteard they affirmed.

In sum,the evidance presented before the Court is that GTE policies and proceedures were constantly violated by management to antimidate employee. My time card that is in question is not properlly signed, I never had the oppotunity to complete or correct any defishinees. GTE has taken away the oppotunity for me dispute the timecard alligation by not following their company policies and proceedures. The plaintiff respectfully request that the court grant plaintiff leave to file a petition for writs of mandamus directed to the Court of Appeals, because the judges lack subject matter jurisdiction of the case in question and to vacate the errone-

jurisdiction of the case in question and to vacate the erroneously improper judgment entered by District Court and the Court of Appeals. I Requert that the Supreme Court utilize a mandamus to correct a federal District Court's errors, *Hindman v. National - Ben Franklin life Insurance Corp., 677 F.2d 617.620 ,620 (7th Cir. 1982),* abuse discretion not allowing full discovery, not reconigizing plaintiff served in the armed forces, refusing to respond to a motion. The next improper act is that the record has been interfed with , because I filed Two motions to have the records supplemented, yet there was only one motion recorded and that was the mooted motion the minute order from judge Manning ruling is not present , my two motions requesting defendent produce the required descovery items. The record stands to be inadequate.

Respectfully submitted

Gregory Alston

(2)

Supreme Court, U.S.
FILED

No: 99 580 JUL 21 1999

OFFICE OF THE CLERK

In The
Supreme Court of the United States

Gregory Alston

V.

GTE Directories Corporation

Appendix

On Petition for Writ of Certiorari

UNITED STATES DISTRICT COURT
SEVENTH JUDICAL DISTRICT
UNITED STATES COURT OF APPEALS

On Petition for Writ of Certiorari

Pro Se Gregory Alston
7533 N. Oakley Avenue
Chicago, IL 60645
(773) 262-1821
Ga6126@Aol.com

28pp

Statement of Issues

1) District Court Judge Manning used her discretion in her ruling. She clearly stated that her reasoning for her ruling was due to the plaintiff had not worked any overtime in 1995.

2) The District Court failed to realize, that the plaintiff is rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED Due to the defendent demanding that the plaintiff work during drill weekends.

3) A clear violation of the Plaintiff's Seventh Amendments Rights. (Jury Trial)

4) The judge to this day has not answered my motion to supplement the record with direct evidance I filed two motions one was mooted and she refused to answer the first motion.

5)Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

6)The defendent should be fined, for not particapting in the framwork of discovery.§ 33:416, Fed 37.

7)Court of Appeals failed to embrace the Issue instead the affirmed the desision with hearsay a documente.
Throughtout the case the defendent has produced affidates,witness and documents without allowing for cross examination.

8)Both Court's refused to knowledge that I had established a prima faca case. Dist 1991, 156 Ill.DEC 797. 212 ILL App. 3d 645, 571 N,E.2d 777 By not recognizing that similary employee of defendent were treated more favorable than Alston.

Defendent

GTE, a Delaware Corporation doing business in Illinois with its principal place of business located at GTE Place, 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261-9810.

Counsel for the defendent:

Faegre & Benson

John Polly

Jennifer Haskin Will

90 South Seventh street

Minneapolis, Mn 55402-3901

(612) 336-3000

Franczek Sullivan PC

David P. Radelet

Michael Z. Green

300 S Wacker Drive

Suite 3400

Chicago, IL 60606-6785

(312) 986-0300

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1. The Trial Court Erred in not recognizing that the Plaintiff had a Prima Facie Case of Race Discrimination under both Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

l) *Johnson v. City of Fort Wayne*, 91 F.3d 922, 931 (7th Cir. 1996)9, 18

2) *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)

2. The Court Erred by not recognizing that similarly employees of Defendant were treated more favorable than Alston.

l) Hiatt v. Rockwell Intern. Corp., 26 F.3d 761 (7th Cir. 1994) 11, 14

2) Johnson v. Artim Transp. System, *Inc.*, 826 F. 2d 538, 543 (7th Cir. 1987)

3) Hughes v. Brown, 20 F.3d 745 at 747 15

4) National Labor Relations Board v. Shelby Memorial Hospital Association, F.3d 550 (7th Cir.- 1993)

5) Green v, Amstrong Rubber Co,. 612F.2d 967,22 F.E.P. Cas (BNA)125 (5th Cir) cert. denied,449 U.S. 879 (1980)

3. The Trial Court erred in granting the Defendant's Summary Judgment, because there were disputed issues of facts pending.

l) Holland v. Arthur Anderson & Co., App. 1 Dist.1991, 156 Ill.Dec. 797, 212 Ill.App.3d 645, 571 N.E.2d 777.20, 21

2) *Sons v. Taylor*, App. 5 Dist.1991, 162 Ill.Dec. 467, 219 Ill.App.3d 923,579 N.E.2d 1281.19, 21

3) Skipper Marine Electronics, Inc. v.United Parcel Service, Inc.,App. 1 Dist.1991, 155 Ill.Dec. 55, 210 Ill.App.3d 231, 569 N.E.2d

3) Kerr v United States Dist. Court for Northern Dist. (1976) 426 US 394. 48 L Ed 725, 96 s Ct 2119.

The Defendant violated The Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED

Fair Housing Act 1968 (42 USCS § 3612) 3rd Circut--Laskaris v Thornburg(1984, Ca3 Pa) 733F22d260,38 Fr Serv 2d

Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

Ex parte Simons (1918) 247 US 231, 62 Led 1094, 38 S CT 497

Hindman v. National - Ben Franklin life Insurance Corp., 677 F.2d 617.620 ,620 (7th Cir. 1982),

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

GREGORY ALSTON,)
)
)
Plaintiff,)
v) Judge Blanche M. Manning
97 C 0559
GTE DIRECTORIES CORPORATION,
Defendant

MEMORANDUM AND ORDER

This matter is before the court on motion of GTE Directories Corporation (GTE), defendant herein, for summary judgment on the complaint of Gregory Alston (Alston), plaintiff herein. Alston has filed a two-count complaint sceking relief for race discrimination pursuant to Title vIr of the Civil Rights Act of 1964 (Title VII), see 42 U.S.C. §2000e et seq. and 42 U.S.C. §1981 (§1981). GTE now moves this court for summary judgment on Alston's complaint pursuant to Fed. R. Civ. P. 56(e). As discussed in greater detail below, this court grants GTE's motion.

BACKGROUND

The relevant background for purposes of the instant motion is as follows. Alston, an African-American male, is an Illinois resident. GTE, a Delaware corporation, does business in Illinois. GTE is a corporate entity that employs in excess of fifteen employees on a fulltime basis, fifty-two weeks per year, and is an "employer" within the meaning of Title VII. GTE operates a printing plant in Des Plaines, Illinois, where it produces, prints, binds, and ships telephone directories. ~rom July or August 1993, until on or about August 8, 1996, Alston was employed in GTE's Des Plaines plant.

Alston was hired by GTE in the summer of 1993 as a helper in the Press Department of GTE's printing plant in Des Plaines, Illinois. As a Pre-press Helper, Alston operated the Rachwal platemaker, a camera system used to take photographs of pages to be printed in the yellow pages directories. The Rachwal imprints the photographs on plates which are then tTansferred to the Pressroom, where the plates are used on the printing press to prod(lce pages for the directories.

For approximately the first eight-to-twelve months that he worked as a Pre-press Helper, Alston worked the first shift, and thereafter, he was transferred to the second shift. Alston understood at the time that he was hired that he would be transferred to the seeond shift.

When Alston was hired, the Des Plaines printing press plant was taking on more business, and because of the increased business, GTE was increasing the number of shifts that were operating in the Pre-press Department. Employees would be moved to different shifts to ensure that there would be adequate coverage on the camera equipment to keep plates ilowing to the printing presses.

At the time that Alston started at GTE, very few employees were working the second and third shifts. Over the course of Alston's employment GTE hired a few new employees to meet increasing demands, but Alston estimates that during the same time period GTE tripled its capacity for plate production, the overall output at the plant increased by sixty per cent, and that GTE needed a full complement of employees on all three shifts to keep pace with demand.

Because the increase in employee numbers was modest compared to the increase in workload, everyone was working very hard and there was little time to do anything in the Prepress Department but produce plates for the printing floor. When new employees were hired, the Company's primary concern was to get them "core training" on any machine that was not manned on a particular shift. Production demands did not permit

existing employees the luxury of "cross-training" to learn new skills. There was time enough only to train new employees to operate the equipment with which they were already familiar.

By 1995, most of the employees in the Pre-press and Press Departments at GTE were working overtime. The minutes of a departmental meeting in June 1995 between management and Pre-press employees stated the following: When a[n] overtime situation arises, employees will be notified as early as possible. Turning down overtime because you don't want to work is NOT ACCEPTABLE. Every employee has been informed of our overtime requirements and will be expected to participate as needed. Continued refusal to work overtime can lead to corrective counseling.

Corrective counseling is a three-step disciplinary process. The first step involves informal discussions. The second step involves a written warning. The third step involves a final warning. The policy explicitly states that "[a]lthough the process is described as a series of steps, the action a supervisor takes with an employee is determined by the specific

I There is at least no dispute that most of the employees in the Pre-press and Press Departments at GTE were working overtime GTE asserts that by 1995, all of the employees in the Pre-press and Press Departments at GTE were working overtime. Alston˜ however, asserts that by 1995, most, but not all, of the employees in the Pre-press and Press Departments at GTE were working overtime Since there is no dispute that most of the employees in the Pre-press and Press Departments at GTE were working overtime, this court will incorporate that fact into the background section for purposes of the instant motion for summary judgment

circumstances of the situation. In some situations an informal discussion is appropriate, while others call for immediate discharge." Employees on corrective counseling are not eligible for promotion.

In October 1995, GTE began the process of insti-

tuting a self-managed work team (SMWT) in the Pre-press Department. The ultimate goal of the SMWT was to empower employees to work collectively, as a group, in making decisions about schedules, training, hours of work, and other issues in the Pre-press Department traditionally resolved by a supervisor. The SMWT was composed of all of the employees on all three shifts in the Prepress Department.

When the Pre-press Department was converted to the SMWT concept, the S~fWT was not immediately capable of assuming full responsibility for all routine management tasks. The Pre-press SMWT conducted approximately two team meetings each month. Alston missed several of these meetings.

Throughout his employment at GTE, Alston ran his own business on the side on evenings and week-ends. Alston also served in the active Navy Reserves, so he was unavailable for work one week-end every month as well as an additional two weeks every year. Throughout his employment at GTE, Alston was also enrolled in courses at Northeastem Illinois University. The classes were mostly unrelated to Alston's employment at GTE, but GTE permitted him to adjust his work schedule so that he could attend class. GTE never denied Alston time off for his personal commitments.

Alston repeatedly refused to work overtime beginning in October 1995, shortly after implementation of the Pre-Press SMWT. Every week-end in October 1995, two week-ends in

November 1995, and every week-end in December 1995, Alston refused requests that he worked overtime. That period was one of the busiest times in the Pre-press Department. Alston was reprimanded for his repeated refusals to work overtime.

In early 1996, the Pre-press SMWT asked its members to sign a Commitment Statement. The purpose of the Commitment Statement was to get members of the SWT to commit to one another their individual and collective commitment to the team concepts inherent in,

and critical to, the functioning and success of the SM~I process. These members of the SMWT created the Commitment Statement which consisted of one sentence, "I agree to participate to the best of my ability in the Des Plaines Pre-Press Self-Management Work Team." Alston repeatedly refused to sign the Commitment Statement. When Alston eventually signed the Commitment Statement, he wrote above his signature, "under duress." Contemporaneously with the circulation of the Commitment Statement for signaturc, the Prepress SMWT was considering altering its member's hours of work from eight hours, five days a week, to ten hours~ four days a week. Alston objected to those hours.

Steve Scarbury met with Alston about his refusal to sign the Commitment Statement. Scarbury was then the Manufacturing Manager, and second in charge of the whole facility. At the time Scarbury approached Alston about his, Alston was the only member of the Pre-press SMWT who had not signed the Commitment Statement. During his meeting with Scarbury, Alston again complained about the hours of work, as well as the team rotations for week-end hours. Scarbury proposed to Alston that he should attend team meetings and participate in the team process to resolve the scheduling issues that were of concern to him.

After the meeting with Scarbury, Alston which was scheduled to begin at 6 p.m. that night, Oberding called Alston into ameeting with Scarbury and Paul Kiefer, the plant manager. Alston left the meeting without permission. Scarbury followed him out, and Alston told Scarbury that he was ready to quit.

Alston's transfer was effective on the night of July 30, 1996. Shortly after he started his shift in the Press Department, Alston told Oberding that he was going home early for personal reasons. Although the parties dispute when Alston left work on July 30, 1996, on his timecard, Alston reported that he left work on July 30, 1996, at 9 p.m. Alston recorded his "Daily Hours Paid" for that day as three hours.

On July 30, 1996, or July 31, 1996, Oberding noted that Alston had written the incorrect time on his timecard. Oberding paged Scarbury after Alston said that he was going home early. Scarbury returned the page before 8:30 p.m.

GTE employees are required to fill out a handwritten timecard, reporting the time that they start working and the time that they stop working each day. At the end of the week, hourly employees at the GTE plant add up their hours, sign the timecards, and then give them to, or leave them for, their supervisors. There is no time clock at the Des Plaines plant to provide independent verification of the time that employees punch in or out. Unless employecs report suspected timecard falsifications, GTE management does not normally have any reason to question the authenticity of employee timecards in the normal course of business.

GTE policy clearly provides that k]nowingly falsifying a time document andlor not reflecting actual time worked will be cause for immediate termination." The policy does not make any exceptions for falsifications of less than an hour. Alston was familiar with GTE's timecard policy. Alston understood that he was supposed to record on his timecard the hours that he actually worked.

After Alston completed his timecard for the pay period and left it for Oberding, Oberding consulted Scarbury's supervisor about Alston's timecard. Oberding told Scarbury that he wanted to offer Alston a chance to correct his timecard. Oberding also expressed his opinion that, if Alston did not correct his timecard, Alston should be discharged.

Scarbury agreed with Oberding's assessment. Scarbury also recommended that Oberding contact Watkins in human resources, which he did. Watkins in turn spoke to Roger DeLong, the pressman with whom Alston was assigned to work on his first night in the Press Department, July 30, 1996. Without telling DeLong what infor-

mation he was looking for, Watkins asked DeLong what time Alston left that night. DeLong told Watkins that Alston left between 8:05 p.m. and 8:20 p.m.

Watlcins also called his supervisor Theresa Martinez, the Regional Director of Human Resourc˜s. Watkins explained the facts as she understood them and solicited Martinez's input. Martinez agreed that termination would be appropriate. Watkins confirmed with Oberding that discharge would be appropriate under the circumstances. Oberding informed Alston that he was discharged for timecard falsification. The only timecard that Alston ever provided to Oberding before his discharge recorded his departure on July 30, 1997, at 9 p.m.

After his termination, Alston created a document to represent what he claims his "timecard should have looked like." Even on that document, he admits that he left work no later than 8:05 p.m. When he later challenged his termination, Alston admitted to Martinez that he recorded the wrong time on his timecard. Neither Oberding, Scarbury, Watkins, nor Martinez are aware of any other GTE employee who ever falsified a timecard. ANAI,YSIS

This court now turns to GTE's Rule 56(c) motion for summary judgment which is before the court. In considering GTE's motion, this court observes that summary judgment is appropriate only where "there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c); see also Celotex Corp. v. Catrett, 477 U.S. 317, 322, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986). When considering a motion for summary judgment, the court must take the facts in the light most favorable to the party opposing the motion and draw all reasonable inferences in that party's favor. See Vitug v. Multistate Tax Comm'n, 88 F.3d 506, 511 (7th Cir. 1996). The party

opposing a Rule 56(c) motion for summary judgment, however, may not defeat it simply by resting upon the allegations and denials of his or her pleadings, but must present affirmative evidence raising a genuine issue of material fact. See Anderson v. Liberty Lobby Inc., 477 U.S. 242, 256-57, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986). Where a party fails to present evidence on an element essential to his or her case and on which he or she would bear the burden of proof at trial, summary judgment is appropriate, as all other facts are rendered immaterial by the failure of proof. See Celotex, 477 U.S. at 322-23, 106 S.Ct. at 2552.

Alston brings two claims, on each of which GTE moves this court for summary judgment on its behalf. GTE moves this court for summary judgment in its favor on Alston's Title VII discrimination claim in count I. GTE also moves this court for summary judgment on Alston's §1981 discrimination claim in count II.

1. Alston's Title VII Race Discrimination Claim In Collnt I

This court first addresses GTE's motion for summary judgment on Alston's Title VrI race discrimination claim in count 1. Count I avers that GTE's termination of Alston was racial
discrimination in violation of Title VII. In support of its motion for summary judgment on count I, GTE essentially raiscs two contentions. First, GTE contends that the record reflects that Alston has failed to establish a prima facie case of racial discrimination in violation of Title VII under the circumstantial method of proving Title VII racial discrimination. Second, GTE argues that even assuming arguendo that the record supports a prima facie casf of Title VII race discrimination, the record fails to establish that GTE's proffered reason for terminating Alston1s employment was a pretext for racial discrimination.

A. Alston's Title VII Race Discrimination Claim In Count I

Based On Direct Evidence

As an initial matter, this court dismisses Alston's Title VII racial discrimination claim in count I to the extent that this claim is based on direct evidence. This court observes that discrimination under Title VII may be proved by direct or circumstantial evidence. See Trahat v. Royal Indemnity Co., 121 F.3d 1094, 1097 (7th Cir. 1997). The Seventh Circuit has indicated that direct evidence of discriminatory intent "can be interpreted as an acknowledgment of discriminatory intent by defendant or its agents." Troupe v. Mav Department Stores Co., 20 F.3d 734, 736 (7th Cir. 1994); see also Hunt-Golliday v, Metropolitan Water Reclamation District of Chicago, 104 F.3d 1004, 1010 (7th Cir. 1997). By definition, direct evidence "'if believed by the trier of fact, will prove the particular fact in question without inference or presumption.'" Hunt-Golliday, 104 F.3d at 1010 (quoting Randle v. LaSalle Telecommunications, 876 F.2d 563, 569 (7th Cir. 1989)). Once a plaintiff makes a showing that the employment decision was motivated in part by an unlawful criterion, the defendant employer may avoid a finding of liability by proving that it would have made the same decision despite its reliance on that characteristic. See Geier v. Medtronic, 99 F.3d 238, 244 (7th Cir. 1996).

Upon review, the record in the instant case is devoid of evidence, verbal or otherwise, reflecting an acknowledgment of discriminatory intent by GTE and/or any of its agents in the termination of Alston's employment. Indeed, Alston has not produced, and does not argue that there is any, direct evidence of discriminatory intent in this regard. On the contrary, Alston maintains that the circumstantial evidence in the record establishes a prima facie case of Title VII race discrimination and that GTE's proffered reason for terminating Alston is merely a pretext for discrimination. As such, this court finds that Alston has failed to produce any direct evidence of discrimination in connection with his Title VII race discrimination claim in count I.

B. Alston's Title VII Race Discrimination Claim In Count I Based On Circumstantial Evidence

This court next addresses whether GTE is entitled to summary judgment on Alston's Title VII race discrimination claim in count I to the extent that the claim is based on circumstantial evidence. The direct evidence method of establishing a Title VII employment discrimination claim aside, a Title VII employment discrimination plaintiff may establish a case via circumstantial evidence under the McDonnell Douglas burden shifting scheme. See McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802, 93 S.Ct. 1817, 1824, 36 L.Ed.2d 668 (1973). In order to establish a prima facie case under the McDonnell Douglas scheme, a plaintiff must show that she was: (i) a member of a protected class; (ii) performning to her employer's legitimate expectations; (iii) discharged; and (iv) others, similarly situated but not of the protected class, were treated more favorably. See McDonnell Douglas, 411 U.S. at 802, 93 S.Ct. at 1817. Once a prima facie case is established, the defendant must come forward with a legitimate, nonDiscriminatory reason for plaintiff's treatment to avoid liability. See Texas Dept. of Community Affairs v. Burdine, 450 U.S. 248, 253, 101 S.Ct. 1089, 109394, 67 L.Ed.2d 207 (1981); McDonnell Douglas Corp., 411 U.S. at 802, 93 S.Ct. at 1824. After the defendant satisfies its burden of production in this regard, the plaintiff has the final burden of proving that the defendant's proffered reason for the employment decision is merely pretextual. See Geier, 99 F.3d at 242.

This court need not address whether Alston has established a prima facie c˜se of Title VII race discrimination under the McDonnell Douglas scheme. This court finds that even assuming arguendo that Alston has established a prima facie case under the McDonnell Douglas scheme, Alston has failed to raise a genuine issue of material fact as to ˜vhether GTE's proffered reason for terminating his employment is merely a

pretext for discrimination. GTE has met its burden of establishing a legitimate, non-discriminatory reason for terminating Alston's employment. In its memorandum in support of its motion for summary judgment, as well as in its reply brief in support of its motion for summary judgment, GTE asserts that its reason for discharging Alston was timecard falsification. This is sufficient to satisfy GTE's intermediate burden as GTE need only articulate a legitimate, non-discriminatory reason for its employment decision in order to satisfy its burden in this regard. See Burdine, 450 U.S. at 253, 101 S.Ct. at 1093-94.

Since GTE has articulated a legitimate, non-discriminatory reason for its employment decision, Alston must present evidence creating a genuine issue of material fact as to whether

GTE's proffered reason is merely a pretext for discrimination. See Russell v Acme-Evans Company, 51 F.3d 64, 68 (7th Cir. 1995). In attempting to establish a basis that an employer's explanation was merely pretextual, a Title VII plaintiff must "focus on the specific reason[ ] advanced by the defendant to support the discharge." Lenoir v. Roll Coater. Inc., 13 F.3d 1130, 1133 (7th Cir. 1994). The Seventh Circuit has defined "pretext" as "a lie, specifically a phony reason for some action." Id. In the absence of direct evidence of discriminatory intent, Alston must establish pretext indirectly by showing one of the following: (i) GTE's explanation has "no basis in fact;" (ii) the explanation was not the "real" reason; or (iii) at least the reason stated was insufficient to warrant discharge. See id.

This coult finds that Alston has failed to establish that intentional falsification of timecards was an insufficient reason to warrant Alston's discharge. The record in this case reflects that GTE's policy was to discharge employees who intentionally falsify their timecards. GTE has produced a document containing its rules for Personnel Practice. This document contains a

section entitled "Responsibility. n Subsection 3.1.2 provides that "[k]nowingly signing a falsified timecard will be cause for immediate termination." Alston does not dispute that this policy applied to GTE employees at the time of his discharge. As such, given this policy and Alston's failure to present evidence to the contrary, this court concludes that intentional falsification of timecards was sufficient reason to warrant his discharge.

This court also finds that Alston has failed to establish that GTE's explanation of his discharge had "no basis in fact" or that the explanation was not the "real" reason for the decision to discharge Alston. Alston relies on inconsistencies in his own testimony to prove that he did not falsify his timecard. It is undisputed that the timecard that Alston submitted to GTE states that he left work at 9 p.m.on the night of July 30, 1996. However, in his deposition testimony, Alston stated that he "was out of there by 7:00, 7:00 o'clock." Also in his deposition, Alston testified that he left at 8:05 p.m. that evening. In his sworn declaration in opposition to GTE's motion for summary judgment, Alston stated that he left between 8:15 and 8:30 p.m., although his declaration does not say when he quit working on July 30, 1996.

Alston also contradicts his own testimony regarding when he filled out his timecard for the night of July 30, 1996, and whether he intentionally falsified his timecard. Although Alston, in his deposition, initially testified that he had filled out his timecard that night, he later changed his testimony. Alston also testified that he filled out his timecard when it was due˜ at the end of the pay period. However, earlier in his deposition., Alston had testified that it was his practice to fill out his timecard at the end of the day or the next day. In addition, in his declaration submitted in response to GTE's motion for summary judgment, Alston states that he did not ever intentionally falsify his timecard. Alston cannot create a genuine issue of material fact with an

affidavit which contradicts his deposition testimony, or with his inconsistent deposition testimony. Cf. Gray v. American Corp., 937 F.Supp. 762, 769 (N.D Ill. 1996). Moreover, Alston admits in his deposition and declaration that the time that he left work was different from what he reported on his timecard. As such, this court finds that the inconsistencies in Alston's deposition and declaration testimony are insufficient to create a genuine issue of material fact as to whether Alston intentionally falsified his timecard.

This court further finds that the record reflects that GTE had a reasonable basis to believe that Alston falsified his timecard. In the deposition of William Oberding, (state here
what Oberding's position was), Oberding testified that when Alston left for the evening on July 30, 1996, Oberding looked at Alston's timecard and noticed that the time was different than when Alston actually left. In the affidavit of Leslie Watkins, Watkins states that she asked Roger DeLong, a senior pressman, when Alston left work the night of July 30, 1996. According to Watkins, DeLong's response corroborate Oberding's personal knowledge.

Even though Alston relies on evidence that two GTE employees, William McCall and Lynn Print, falsified their timecards but were not discharged, this court finds no merit to Alston's posit;on in this regard. In particular, the record is devoid of evidence that GTE management knew that these or any employees other than Alston, falsified their timecards. In Garduno v. Ouaker Oats Co., 863 F.Supp. 676, 681 (N.D. Ill. 1994), the court conclud˜d that a Title VII plaintiff did not establish that the defendant's reason for discharging him, ˜vaS a pretext for disc˜imination. In so doing, the CGurt reasoned that all of the plaintiff's evidence came from his own mouth, and he had no testimony or affidavits or any other witnesses confirming his allegations and statements. See id. In this case, the record is devoid of any evidence, other than Alston's testimony that GTE man-

agement knew that any employees,2 other than Alston, falsified their timecards but were nevertheless retained. Thus, as in Garduno, Alston failed to establish that the employer's reason for discharging him was a pretext for discrimination. Hence, this court finds that GTE is entitled to summary judgment

2 In his Local Rule 12(b)(3) statement Alston asserts, inter alia, that a meeting was held on or around June 20, 1996, wherein GTE management discussed timecard violations other than Alston's In so doing, Alston relies on his deposition testimony for the assertion that other timecard violations were discussed and the minutes of the June 20, 1996, meeting Nowhere in the minutes of the meeting are individual names used or is there mention of anyone other than Alston who falsified a timecard As a result, Alston's reliance on these materials is without merit on count I of the complaint.

II. Alston's §1981 Race Discrimination Claim In Count II

This court also grants GTE's motion for summary judgment on Alston's §1981 race discrimination claim in count II. The Seventh Circuit has recognized that "[a]lthough section 1981 and Title VII differ in the types of discrimination they proscribe, the methods;of proof and elements of the case are essentially identical." Johnson v. City of Fort Wayne Indiana, 91 F.3d 922, 940 (7th Cir. 1996). In count II, Alston claims that his discharge was racially motivated in violation of §1981 and, in so doing, relies on the same materials in the record in support of his Title VII claims in count I.

Consistent with the foregoing analysis of Alston's Title VII claim in count I, this court grants GTE's motion for summary judgment on count II of the complaint.

CONCLUSION

For the foregoing reasons, This court grants GTE's motion for summary judgment.

JUN 18, 1999

BLANCHE M. MANNING
United States District Court Judge

For the Seventh Circuit
Chicago, Illinois 60604

Subrnitted April 22, 1999
Decided Apnl 22, 1999

Before

Hon. RICHARD A. POSNER, C'hief Judge

Hon. FRANK H. EASTERBROOK, Circuil Judge

Hon. MICHAEL S. KANNE, Circuit Judge

No. 98-2842

GREGORY ALSTON,

Plaintiff-Appellant,

Appeal from the United States District Court for the Northem District of Illinois, Eastern Division

No. 97 C 0559

GTE DIRECTORIES CORPORATION,
Defendant-Appellee.

Blanche M. Manning, Judge.

ORDER

Believing his former employer, GTE Directories Corp. ("GTE"), fired him because he is African American,

Gregory Alston filed suit against GTE under Title V˜ of tne I 964 Civil Rights Act and 42 U.S.C. § 1981 . The district court granted GTE summary judgment finding that Alston had not raised a genuine issue of material fact regarding the company's motivation for firing him. We affirm.

Background

For three years Alston worked at GTE's Des Plaines printing plant, spending all but the last few weeks in the pre-press department. During his time there, GTE instituted team management in certain departments, including the pre-press department. Alston resisted the move

After an examination of the briefs and the record, we have concluded that oral argument is unnecessary. Thus, the appeal is submitted on the briefs and the record. See Fed. R. App. P. 34(a)(2).
to team management, so his supervisors decided to move Alston to the press department where team management had not been instituted. They informed Alston of the transfer at a meeting on July 30, 1996. Alston apparently was upset and walked out of the meeting. He then went to work in the press department, but after a few hours he went home.

When Alston filled out his timecard for July 30, he credited himself with working three hours, from 6 p.m. to 9 p.m. It is undisputed, however, that Alston left, at the latest, by 8:15 p.m. Alston's supervisor, Bill Oberding, noticed that Alston had written the incorrect time on his time card. Oberding informed his supervisor of the problem and confirmed with a person in the press department that Alston had left before 8:30.

Oberding then spoke with the plant's human resources administrator, who informed him that Alston could be discharged for timecard falsification. Oberding also learned that Alston had previously been warned about timecard falsification. Finally, Oberding approached Alston and asked him if he wanted to submit his timecard in its current form. The parties dispute whether Alston was given a full opportunity to correct the timecard at that time, but it is undisputed that Alston never sought to change the timecard. Shortly thereafter Oberding fired Alston.

Believing GTE fired him because he is African American, Alston sued GTE under Title VII of the 1964 Civil Rights Act and 42 U.S.C. § 1981. The district court, applying the McDonnell Douglas framework, concluded that Alston had not raised a genuine issue of material fact regarding whether GTE's articulated reason for firing him, timecard falsification, was pretextual. The district court, therefore, granted GTE summary judgment. Alston now appeals.

Analysis

We review a district court's grant of summary judgment de novo, construing the evidence and the inferences drawn from it in the light most favorable to the non-moving party. See Curran v. Kwon, 153 F.3d 481, 485 (7th Cir. 1998). Summary judgment is appropriate where there is no genuine issue of material fact such that judgment is proper as a matter of law. See id. (citing Fed. R. Civ. P. 56(c)).

Having no direct evidence of racial discrimination, Alston pursues the McDonnell Douglas indirect method of proving his discrimination claims. See Johnson v. City of Fort Wayne, Ind, 91 F.3d 922, 931 (7th Cir. 1996). Under this approach, a plaintiff must first establish a prima facie case. Id. If the plaintiff makes such a showing, the employer must articulate a legitimate, nondiscriminatory reason for its actions. Id. Once an employer

does so, the burden shifts back to the plaintiff to show that the proffered reason is pretextual. Id The parties dispute whether Alston has established his prima facie case, but we decline to resolve this dispute. Instead, because GTE has met its burden of articulating a legitimate, non-discriminatory reason for Alston's termination, we proceed directly to the issue of whether Alston has raised a genuine issue of material fact concerning pretext. See Chiaramonte v. Fashion Bed Group, Inc., 129 F.3d 391, 398 (7th Cir. 1997).

A plaintiff attempting to establish pretext indirectly. as Alston is, must demonstrate that the employer's proffered reason is unworthy of credence. See Essex v. United Parcel Ser˜.. 11 I F.3d 13W, 1310 (7th Cir. 1997). Such a showing requires evidence that the employer's explanation: (I) has no basis in fact; (2) was insufficient to warrant the action taken; or (3) did not actually motivate the employment decision. See Johnson, 91 F.3d at 931; Mechnig v. Sears, Roebuck & Co., 864 F.2d 1359, 1365 (7th Cir. 1989).

The relevant question is whether the employer honestly believed its proffered reason for discharge, not whether the employer was mistaken, acted unfairly, or based its decision on a bad policy. See Bahl v. Roval Indemnitv Co., 11˜ F.3d 1283, 1291 (7th Cir. 1997); Essex, 111 F.3d at 1310: Giannopoulos v. Brach & Brock Confections, Inc., 109 F.3d 406, 411 (7th Cir. 1997).

Much of Alston's argument on appeal purports to challenge whether the timecard falsification explanation offered by GTE has a basis in fact. The problem for Alston is that all his allegations and evidence focus on the correctness of the falsification charge or the faimess of the discharge procedure. For example, Alston asserts that he did not intend to falsify his timecard and points to evidence he claims supports this assertion. None of the evidence, however, refutes the undisputed facts that his timecard was inaccurate, that he had previously been warned of timecard falsification, and that he did not take the opportunity he was given to correct his

timecard. While there may be room for disagreement conceming whether GTE was right in concluding that Alston intentionally falsified his timecard, there is undoubtedly a factual basis for such a conclusion. The same is true with respect to each of Alston's attempts to show the timecard falsification explanation lacks a factual basis. C˜ Bahl, I 15 F.3d at 1291-92 (employer had factual basis for discharge regardless of whether performance was in fact inadequate).

Alston fares no better in challenging whether his misconduct warranted discharge. GTE policy expressly provides that "[k]nowingly falsifying a time document and/or not reflecting actual time worked will be cause for immediate termination." Moreover, just over one month before Alston submitted his inaccurate timecard, his supervisor had informed the pre-press team that falsification of timecards "will lead to immediate termination." Alston cannot argue that timecard falsificatiGn did not warrant discharge.

Finally, Alston's attempt to demonstrate that timecard falsification was not the "real reason" GTE fired him also falls short. Alston first tries to point to similarly situated non-African American employees who falsified their timecards yet were not discharged. Alston's allegations in this regard do not rise much above mere speculation.

But even if we were to give some weight to the allegations, it would not raise a genuine issue of material fact since there is no competent evidence that GTE knew that the employees Alston identifies, or any other employees, falsified their timecards. C˜ Essex, I I I F.3d at 1311 (management had no knowledge of excessive moonlighting by others); Mechnig, 864 F.2d at 1366 (management had no knowledge of timecard falsification by others). Alston argues that GTE must have been aware of timecard falsification given that the subject was mentioned at a pre-press team meeting. But, there is no hint that the discussion at that meeting was motivated by knowledge of falsification by particular persons, that the alleged persons were not African Ameri-

can, or that the alleged persons were not terminated.

Alston also argues that because the Illinois Department of Employment Security ("IDES") found that he was not fired for cause and granted him unemployment benefits, it follows that he was not, in fact, fired for timecard falsification. The IDES finding, however, does not go to the honesty of the explanation GTE gave for firing Alston. GTE apparently told the IDES that the reason for Alston's discharge was timecard falsification. The IDES may have decided that the ground GTE gave was not right (or not adequate), but Alston's discrimination suit does not depend on whether he was fired "for cause," it depends on whether he was fired for race. That the IDES may have concluded that timecard falsification is not "cause" does not imply a finding that GTE did not believe that this was the reason for his discharge. C~ McClendon v. Indiana Sugars, Inc., 108 F.3d 789, 798-99 (7th Cir. 1997) (rejecting an identical argument).

In sum, Alston has failed to produce any competent evidence that raises a genuine issue of material fact regarding the honesty of GTE's explanation that he was fired because of timecard falsification. Thus, the district court properly granted GTE summary judgment on Alston's Title VII claim. Likewise, because claims brought under 42 U.S.C. § 1981 and ones brought under Title VII are amenable to the same methods of proof and the elements of each type of claim are essentially identical, see Johnson, 91 F.3d at 940, we conclude that the district court properly granted summary judgment on Alston's § 1981 claim. Accordingly, we AFFIRM.

IN THE

SUPREME COURT OF THE UNITED STATES

GREGORY ALSTON,	)	
	)	
Plaintiff-Appellant	)	97C 0559
	)	
v.	)	
	)	No. 98-2842
	)	
GTE DIRECTORIES CORPORATION,	)	
	)	
Defendant-Appellee	)	
	)	

PROOF OF SERVICE

TO: FAEGRE & BENSON LLP
John W. Polly
Jennifer Haskin Will
2200 Norwest Center
90 South Seventh Street
Minneapolis, MN 55402-3901
(612) 336-3000

FRANCZEK SULLIVAN P C
David P. Radelet
Michael Z. Green
300 S. Wacker Drive
Suite 3400
Chicago, IL 60606-6785
(312) 986-0300

PLEASE TAKE NOTICE Gregory Alston Plaintiff-Appellant, Pro Se on or before OCT 2, 1999, AS REQUIRED BY SUPREME COURT RULE 29 I have served the petition for CERTIORARI WRIT on each party to the above proceedings or that party's counsel, and on every other person required to served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage prepaid.

Gregory Alston
7533 N. Oakley Av.
Chicago, IL 60645
(773) 262-1821
GA6126@AOL.COM

Gregory Alston

Plaintiff-Appellant Pro Se

GTE Directories **BI-WEEKLY TIME REPORT**

2

GREGORY ALSTON
DEPT. 31~~5107~~ 3
354-62-6924
WK END: SHIFT:

AMOUNT SHIFT PREMIUM $ _____

OTHER DOLLAR ADJUSTMENTS (FOR PAYROLL USE) HED ____ AMT ____

Date		IN	OUT	IN	OUT	DAILY HOURS PAID REG	O.T.	D.O.T.*	VAC.	ILL	HOL	JURY	** UNPD	OTHER (SPECIFY)
	Sun.	5:00			6:00		1							
	Mon.													
	Tue.	6:00			9:00	3								
	Wed.	6:00			4:00	10								
	Thur.	6:00			4:00	10								
	Fri.	6:00			4:00	10								
	Sat.													
	Sun.													
	Mon.													
	Tue.													
	Wed.													
	Thur.													
	Fri.													
	Sat.													
TOTAL HOURS PAID						33	1							
						01	02	04	08	11	07	09	15	

INSTRUCTIONS
1. Name and Period Ending must be completed
2. Hours should be computed in one-quarter hours
3. Employee and Supervisor must sign report

* Double Over Time
** Unpaid Hours

EMPLOYEE SIG _____

SUPERVISOR SIG _____

FORM 99 DC REV. (9/88)

EXHIBIT

BEST AVAILABLE COPY